IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 05-CV-329-TCK-SAJ**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

RESPONSE OF STATE OF OKLAHOMA TO MOTION FOR SANCTIONS OF THE CARGILL DEFENDANTS

I. INTRODUCTION

The Cargill Defendants are trying to win the entire case as a sanction based on the false premise that the State has violated discovery orders. In particular, the Cargill Defendants seek an order precluding the State from introducing any direct or circumstantial evidence of Defendants' violations of state or federal law, including maintaining a nuisance, as well as precluding introduction of any evidence to support certain paragraphs of the State's complaint based upon supposed violations of the Court's discovery orders. Upon review, the Court will find that the State has, in fact, complied with the Court's orders, that no sanction is appropriate, and that none of the authority relied upon by the Cargill Defendants supports the relief sought. The Cargill Defendants' motion is essentially a "motion to win the case" by foreclosing the admission of any evidence against the Cargill Defendants based upon specious claims of violations of the Court's discovery orders.

II. THE ORDERS ISSUED ON CARGILL'S MOTION TO COMPEL

At the hearing on the Cargill Defendants' motion to compel discovery, the parties announced an agreement that interrogatories for which the State relied upon Rule 33(d) designations would be supplemented on June 1, 2007 under the same standards as set forth in the Court's orders dated February 26, 2007 and April 4, 2006 [Dkt. Nos. 1061, 1118], referenced by the parties as the "Tyson Rule." Order, Dkt. No. 1150, at p. 2. Nothing in this Order required the State to employ a Rule 33(d) designation, but only reflected the agreement of the parties that any Rule 33(d) designation would meet the terms of the "Tyson Rule."

Additionally, at that hearing the Cargill Defendants challenged the adequacy of the State's responses to six interrogatories. Upon examination of those responses, the Court found that four of the six responses were adequate and that two of the State's responses to Cargill's Interrogatories (9 and 13) should be supplemented. Order, Dkt. No. 1150 at 8-9. With regard to Interrogatory No. 9, the Court ordered the State:

> to file a supplemental response describing with particularity each instance of which Plaintiff has knowledge where a Cargill entity has used poultry waste disposal practices in violation of federal and state law and regulations. If Plaintiff has no direct evidence of such violation and **is relying on circumstantial evidence,** the response shall so state and shall describe the circumstantial evidence with as much particularity as possible.

Dkt. No. 1150 at 8-9 (emphasis provided). With regard to Interrogatory No. 13, the Court ordered the State:

> [T]o file a supplemental response describing with particularity each instance of which Plaintiff has knowledge in which a Cargill entity has created or maintained a nuisance in the State of Oklahoma. If Plaintiff has no direct evidence of such a violation and **is relying on circumstantial evidence**, the response shall so state and shall describe the circumstantial evidence with as much particularity as possible. If Plaintiff has no direct or circumstantial evidence other than that provided in the response to Cargill interrogatory number 2, the supplemental response shall so state.

Dkt. # 1150 at p. 9 (emphasis provided). The State supplemented its responses, and it is these supplements that the Cargill Defendants incorrectly claim violate the Court's orders.

III. THE SUPPLEMENT TO THE RESPONSE TO INTERROGATORY NO. 9 COMPLIES WITH THE COURT'S ORDER

Cargill's Interrogatory No. 9 asked for the legal and factual basis for the allegations in ¶ 56 of the First Amended Complaint ("FAC") that any Cargill entity's "poultry waste disposal practices are not, and have not been, undertaken in conformity with federal and state laws and regulations" and to identify supporting witnesses. The State objected that this was an improper contention interrogatory because ¶ 56 merely referred to other paragraphs of the FAC which allege violations of state and federal laws, and that it was unduly burdensome and asked the State to explain the basis for its entire lawsuit. The Court overruled this objection and ordered a response, as set forth above.

The State's supplemental response (attached hereto as Exhibit 1) lists the federal and state laws violated by the Cargill Defendants' waste disposal practices. The supplemental responses identify the waste disposal practice at issue: land application of waste from Cargill's growing operations and those of its contract growers. In direct response to the interrogatory, the State set forth in detail the circumstantial case by which it will prove that the land application of the waste from Cargill's growing operations and those of its growers within the IRW releases contaminants into the environment. The answer further explained that once this waste is spread on the land, rainfall (1) washes the constituents of this waste into the surface waters of the IRW, and (2) causes the

constituents to also seep and leach from the surface on which it is applied into ground waters that also flow into IRW surface waters.

The State explained that its claim that these wastes pollute the ground and surface water is based upon a circumstantial case which rests upon the testimony of experts who will present the case through at least eight separate means. That proof, as set out in the answer, begins with the Karst geology of the IRW (which is particularly susceptible to surface water runoff and seepage and leaching into ground water) and the hydrogeological connections between surface of the land, groundwaters, and surface waters (which will demonstrate a pathway through surface and ground water that runs into streams and rivers of the IRW and eventually into Lake Tenkiller). The State said it will also show a chemical "finger print" which is found along the water pathway from waste application sites to Lake Tenkiller.

Additionally, the State responded that it would demonstrate a nuisance by conducting core analysis of Lake Tenkiller and comparing it with other lakes and poultry waste growth and production. The State responded that it would analyze historical poultry waste contaminant concentration trends in the IRW surface waters, including Lake Tenkiller, and compare those trends with poultry production and waste volume in the IRW. The State further responded that it would demonstrate poultry waste indicator chemicals and substances occurred at locations which are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief. The State further stated that it will demonstrate that the density of poultry operations directly influences the concentrations of phosphorus in IRW streams and rivers and that the contributions of phosphorus from land application of poultry waste

causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief, as well as showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis. Finally, the State responded that it would show that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence. This answer fully explained to Cargill the factual basis for the allegations in ¶ 56 of the FAC that any Cargill entity's "poultry waste disposal practices are not, and have not been, undertaken in conformity with federal and state laws and regulations"

The State's supplemental response referred to its scientific evidence produced on February 1, 2007, which the State has continued to supplement on an ongoing basis. This scientific evidence of the State's sampling includes the locations where the samples were taken allowing the Cargill Defendants as easily as the State to locate sample sites down stream from, close to or adjacent to their operations in the IRW. Further included in this data is the laboratory analysis of the soil and waste samples collected on the property of their contract grower.

With this answer, the State has set forth in detail the circumstantial case which it will offer and the facts upon which that case will be presented. It further stated that should it identify direct evidence which it intends to offer as proof, it will supplement its answer. At this time, the State has not identified such evidence. The State's answer fully complies with this Court's order.

IV. THE SUPPLEMENT TO THE RESPONSE TO INTERROGATORY NO. 13 COMPLIES WITH THE COURT'S ORDER.

Cargill's Interrogatory No. 13 asked the State to explain the factual and legal basis for its allegation in Count 4 of the FAC that the conduct of the Cargill entities

constitutes a nuisance under Oklahoma law, including, but not limited to, violation of 27 Okla. Stat. § 2-6-105 or 2 Okla. Stat. § 2-18.1 and to identify its witnesses. The State initially responded by incorporating its response to Interrogatory No. 2 (which in turn incorporated the response to Interrogatory No. 1). The State further pointed to 2 Okla. Stat. § 2-18.1 which makes it unlawful for any person to cause pollution of the waters of the State. Initially, the State responded that Cargill had placed waste or caused waste to be placed in locations throughout the IRW where it is likely to cause pollution and which did cause pollution. Additionally, the State explained that 27 Okla. Stat. § 2-6-105 is violated when persons cause pollution of the waters of the state, or place or cause to be placed wastes in a location where they are likely to cause pollution, which is declared to be a public nuisance. The State responded that the Defendants are directly responsible for their own operations within Oklahoma which pollute the water and are legally responsible for the operations of contract growers which do so. The Court ordered this response supplemented as indicated above.

The State's supplemental responses to Interrogatory No. 13 (attached hereto as Exhibit 1) incorporated its original responses and thereby the responses to Interrogatories 1 and 2 (attached hereto as Exhibit 2). These incorporated responses provided the legal basis on which the Defendants are responsible for the wastes of their contract growers. According to the answer, this legal liability is based upon the nature of the contractual relationship between the Defendants and their growers (Interrogatory No. 1), and based upon Restatement Second of Torts, § 427B, and the transport mechanisms which create a

nuisance (Interrogatory No. 2 and its supplement).[1] Response to Interrogatory No. 2 also included references to over thirty texts, scholarly articles, studies and reports, setting out the well-understood transport mechanisms and the resulting injuries which form the basis for the State's claims.

In addition, the supplemental response to Interrogatory No. 13 explained in terms similar to the response to Interrogatory No. 9 the circumstantial case by which the State intends to prove that the Cargill Defendants have created and maintained a public nuisance—whether based upon statute or common law—based upon the State's sampling, expert testimony, and peer reviewed articles on various scientific subjects. That circumstantial proof will center upon the fact that waste from the Cargill Defendants' operations and those of its growers when spread on the ground in the IRW releases contaminants into the environment which are transported by rainfall into the ground and surface water of the IRW. The proof will be based upon similar expert testimony and upon the State's sampling program, the results of which have been produced to the Defendants as it has been collected and analyzed.

The State also made it explicit that if it identifies direct evidence upon which it intends to rely to prove the Cargill Defendants' violation of these laws, it will supplement

[1] In *City of Tulsa v. Tyson*, 258 F.Supp.2d 1263, 1296 (N.D.Okl. 2003)(withdrawn in connection with settlement), the Defendants, including Cargill, "admit in their response brief that they were aware in the 1990s that 'phosphorus presented potential problems to the Watershed' and, therefore, attempted to address the problem by educating their growers regarding better litter management. Given these admissions, the Court finds Poultry Defendants had 'reason to recognize that, in the ordinary course of [the growers] doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result.'" The Cargill Defendants would have the Court believe they do not understand now what they did understand in the 1990s, and certainly have understood since the Court's opinion in *City of Tulsa.*

its answer. The State has not identified such evidence and makes it explicit that it intends on proving its case using the circumstantial case as set forth in its response.

Thus, taking (1) the narrative account of the State's evidence provided in response to Interrogatory Nos. 1 and 2 and (2) the description of the State's expert case and reference to its sampling results provided in the State's supplemental response to Interrogatory No. 13, the State has given the Cargill Defendants the principal and material facts which support its claims of nuisance. This is the proper role of a response to a contention interrogatory. *See Hiskett v. Wal-Mart*, 180 F.R.D. 403, 405 (D. Kan. 1998).

V. THE LIABILITY OF THE CARGILL DEFENDANTS MAY BE DEMONSTRATED BY CIRCUMSTANTIAL EVIDENCE

Clearly, the Cargill Defendants do not like the State's answer. With their motion, they seek to have this Court compel the State to set forth a case based on direct evidence showing the "specifics" of date, time, and place they or their contract growers released pollutants into the IRW, and the exact pathway those pollutants followed on their way to the waters of Oklahoma's portion of the IRW. They further seek the State to provide "direct evidence" of how specific releases of waste violated each specific state or federal law. The Cargill Defendants want to frame this case by requiring, by analogy, the same sort of evidence as a trooper's observations that lead to a speeding ticket for driving too fast at a particular place and time, or the trooper's observations of littering on the highway at a specific place and time.

The law imposes no such burden on the State. Liability under both federal and state law may be inferred from the totality of the circumstances; it need not be proven by direct evidence. *See, e.g., Tosco Corp. v. Koch Industries,* 216 F.3d 886, 892 (10th Cir.

2000) (CERCLA context, also evidence establishing Koch disposed of hazardous wastes that have percolated through the soils and into the groundwater which is hydrologically connected to the Creek makes Koch's denial of any unlawful activity *vis à vis* water pollution and the public nuisance stemming therefrom ring hollow); *Ohio Oil Company v.* Elliott, 254 F.2d 832, 834 (10th Cir. 1958) (salt water pollution case recognizing Oklahoma law allows proof by circumstantial as well as by positive or direct evidence, and it is not necessary that the proof rise to the degree of certainty which will exclude every other reasonable conclusion than the one arrived at by the jury); *Mid-Continent Petroleum Corporation v. Miller*, 79 P.2d 804, 805 (Okl. 1938) (salt water pollution case stating in a civil case all that the plaintiff is required to prove in order to establish causal connection between defendant's negligence and plaintiff's injury is to make it appear more probable that the injury came in whole or in part from the defendant's negligence than from any other cause, and this fact may be established from circumstantial evidence); *King v. State*, 109 P.2d 836 (Okla. Crim. App. 1941) ("It has been held by this court that proof of a public nuisance could be proved by circumstantial evidence").

In the context of a Clean Water Act case, one Court of Appeals noted that "[r]ather than pinpointing the origins of particular molecules, a plaintiff 'must merely show that a defendant discharges a pollutant that causes or contributes to the kinds of injuries alleged' in the specific geographic area of concern." *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 161 (4th Cir. 2000) (*en banc*). In that case, the court went on to explain the applicability of circumstantial evidence to proof in environmental cases:

> Litigants routinely rely on circumstantial evidence to prove any number of contested issues. And if a prosecutor may rely wholly on

> circumstantial evidence to prove that a criminal defendant is guilty beyond a reasonable doubt, there is no apparent reason-and certainly not a reason apparent from the Constitution, the Federal Rules, or the Clean Water Act itself-to regard this type of proof as *per se* deficient for establishing standing in a Clean Water Act case. Citizens may thus rely on circumstantial evidence such as proximity to polluting sources, predictions of discharge influence, and past pollution to prove both injury in fact and traceability. This is what Wilson Shealy did. To require more would impose on Clean Water Act suits a set of singularly difficult evidentiary standards.

Friends of the Earth, 204 F.3d at 163. Thus, to make its case the State need not track each truck carrying waste from the Cargill Defendants' birds to land spreading sites over the decades the Cargill Defendants have operated in the IRW, nor must the State trace each molecule of phosphorus or other pollutants, or individual bacteria from the Cargill Defendants' poultry waste. Rather, it may prove its case circumstantially. That is what it plans to do and what its interrogatory response explained.

The Cargill Defendants cannot force the State to set forth its proof in the manner in which the Cargill Defendants judge to be best for their defense of these claims. The State has the right to prove its case circumstantially as it described in detail in its answers. *See, e.g., Glass v. Beer*, 2007 WL 913876, *11 (E.D. Cal. Mar. 23, 2007) ("Plaintiff may not seek to compel an answer simply because he does not like the answer and would prefer a different one."); *PAS Communications, Inc. v. Sprint Corp.*, 2000 WL 1867571, *12 (D. Kan. Dec. 1, 2000) ("In essence, then, it appears as if plaintiffs simply do not like the answer that defendant has provided to the particular interrogatories. This is not a proper basis for a motion to compel.").

VI. THE STATE MAY WITHDRAW PREVIOUS RULE 33(d) DESIGNATIONS IF IT IS SATISFIED WITH ITS NARRATIVE RESPONSES

The Cargill Defendants miss the mark when they charge the State with violating any Court order by withdrawing certain of its earlier Rule 33(d) designations. As demonstrated above, the Court's order of May 17, 2007 (Dkt. No. 1150), at page 2, recognized the agreement of the parties that the "Tyson Rule" would govern Rule 33(d) designations. The State decided, with respect to certain interrogatories propounded by both the Cargill Defendants and the Tyson Defendants, to withdraw its Rule 33(d) designations and rely upon narrative responses instead. In the case of other interrogatories, the State supplemented its Rule 33(d) designations in compliance with the "Tyson Rule." For instance, the supplemental response to Cargill's Interrogatory No. 3 the State reincorporated its previous response and the supplemental response to Interrogatory No. 2, which incidentally incorporated over thirty references, and withdrew the previous Rule 33(d) designation. It similarly withdrew its Rule 33(d) designations for several other responses as well. On the other hand, the supplemental response to Interrogatory No. 15 relied upon Rule 33(d) and, pursuant to the "Tyson Rule," designated certain scholarly articles and sets of sampling data to support its response.

This is in no way contrary to the Court's order. Nothing in the Court's order required the State to make a Rule 33(d) election. That election is discretionary with the State, and the State was free to withdraw the election. Cargill cites no law to the contrary, and no law in which a party was sanctioned for withdrawal of a Rule 33(d) election.

VII. NONE OF THE AUTHORITY CITED BY CARGILL SUPPORTS ITS CLAIM FOR SANCTIONS

The Cargill Defendants present cases for boilerplate propositions, none of which is analogous to the facts of the instant case, in which there is no violation of the Court's

orders. Even assuming *arguendo* the unfounded claims of the Cargill Defendants were correct, the authority presented does not support the relief requested.

For instance, *Lewis v. Wal-Mart Stores, Inc*., 2006 WL 1892583, *4 (N.D. Okla. July 10, 2006) was a case concerning corporate-owned life insurance for Wal-Mart employees in which Plaintiffs' counsel was accused of violating an order against soliciting clients while contacting employees about insurance issues. The Court found that plaintiffs' counsel's violation of the Amended Confidentiality Order was not so blatant that reasonable minds could not differ as to whether it amounted to solicitation. *Id.* The Court found that the sanction of prohibiting plaintiffs' counsel from representing those individuals who responded to the solicitation may have been too harsh. *Id*. The case of *Jones v. Thompson*, 996 F.2d 261 (10th Cir. 1993) was a pro se legal malpractice case in which the plaintiffs failed and refused to attend pretrial conferences or prepare pretrial orders, disobeyed orders to appear for depositions, and failed to pay monetary sanctions for their earlier violation of court orders, resulting in dismissal of their case.

In *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976), the Court upheld the sanction of dismissal for failure to answer interrogatories over a period of seventeen months, after being ordered to do so, and showing "flagrant bad faith" in an anti-trust case. *Adolph Coors Co. v. American Ins. Co*., 164 F.R.D. 507, 519 (D. Colo. 1993), was an insurance coverage dispute in which Liberty Mutual attempted to hide requested documents by asserting they were subject to protective orders in other cases, repeatedly refused to produce the documents after being twice ordered to do so, and after being subject to a $10,000 sanction to cover costs incurred by the

Plaintiff, was finally sanctioned by precluding it from asserting as a defense that it lacked coverage over certain of Plaintiff's claims.

White v. General Motors Corp., Inc., 908 F.2d 675 (10th Cir. 1990), was a Rule 11 case arising from an employment case brought by two former GM employees who had taken advantage of a separation offer, been paid therefore, had given a release, and then sued GM. The Court of Appeals affirmed the imposition of sanctions, but remanded for consideration of relative fault and a possible reduction of the amount imposed. *Zhou v. Pittsburg State University*, 2003 WL 221782 (D.Kansas Jan. 29, 2003), was an employment discrimination suit in which the plaintiff, who had moved to California, repeatedly quibbled about the date, time, and location of his deposition, repeatedly refused to appear for his deposition or to submit necessary information for the pretrial order, and was assessed costs, rather than dismissal, as a sanction. In *M.E.N. Co. v. Control Fluidics, Inc*., 834 F.2d 869 (10th Cir. 1987), the Court set aside a default judgment against defendants after they and their attorneys failed to provide discovery or appear for noticed depositions, and then failed to obey a court order to appear for depositions, file a pretrial memorandum, and pay sanctions to plaintiffs, remanding, for consideration of the knowledge of the defendants, as opposed to their attorney, of the trial court's orders.

None of these authorities support the Cargill Defendants' claim that the State should be sanctioned. In fact, if read with care, these cases reveal that the rhetoric and tactics employed by the Cargill Defendants are over the top. The Cargill Defendants are overreaching and illogical in their request for sanctions. The State has demonstrated that it fully and completely answered the challenged interrogatories. It provided the Cargill

Defendants with the principal and material facts supporting its circumstantial case supporting its claims in its responses to Interrogatories 9 and 13. The fact that the Cargill Defendants seek an entirely unwarranted sanction—a prohibition on the introduction of any *circumstantial* evidence against them—is a desperate ploy to avoid a finding of liability.

Finally, the State disobeyed no order of the Court in withdrawing unnecessary Rule 33(d) designations. The Cargill Defendants have not challenged the adequacy of the State's narrative responses to those responses in which the State withdrew its Rule 33(d) designations. Because no violation of any order occurred, no sanction is warranted.

VIII. CONCLUSION

For the reasons set forth above, the State has complied with the Court's discovery orders, and the relief sought by the Cargill Defendants is unwarranted. Accordingly, the State requests that the Court deny in full the Cargill Defendants' request for sanctions.

Respectfully submitted,

W.A. Drew Edmondson OBA # 2628
Attorney General
Kelly H. Burch OBA #17067
J. Trevor Hammons OBA #20234
Tina Lynn Izadi OBA #17978
Assistant Attorneys General
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Douglas A. Wilson OBA #13128
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581

D. Sharon Gentry OBA #15641
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

James Randall Miller, OBA #6214
222 S. Kenosha
Tulsa, OK 74120-2421
(918) 743-4460

/s/ Louis W. Bullock
Louis W. Bullock, OBA #1305
Miller Keffer Bullock Pedigo LLC
110 West 7th Street, Suite 707
Tulsa, OK 74119-1031
(918) 584-2001

David P. Page, OBA #6852
Bell Legal Group
P. O. Box 1769
Tulsa, OK 74101
(918) 398-6800

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice)*
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice)*
Motley Rice, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Jonathan D. Orent
(admitted *pro hac vice)*
Michael G. Rousseau
(admitted *pro hac vice)*
Fidelma L. Fitzpatrick
Motley Rice, LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

Frederick C Baker fbaker@motleyrice.com, mcarr@motleyrice.com; fhmorgan@motleyrice.com

Michael R. Bond michael.bond@kutakrock.com, amy.smith@kutakrock.com

Vicki Bronson vbronson@cwlaw.com, lphillips@cwlaw.com

Paula M Buchwald pbuchwald@ryanwhaley.com

Louis Werner Bullock LBULLOCK@MKBLAW.NET, NHODGE@MKBLAW.NET; BDEJONG@MKBLAW.NET

Gary S Chilton gchilton@hcdattorneys.com

Robin S Conrad rconrad@uschamber.com

W A Drew Edmondson fc_docket@oag.state.ok.us, drew_edmondson@oag.state.ok.us; suzy_thrash@oag.state.ok.us.

Delmar R Ehrich dehrich@faegre.com, etriplett@faegre.com; ; qsperrazza@faegre.com

John R Elrod jelrod@cwlaw.com, vmorgan@cwlaw.com

Fidelma L. Fitzpatrick ffitzpatrick@motleyrice.com

Bruce Wayne Freeman bfreeman@cwlaw.com, lclark@cwlaw.com

D. Richard Funk rfunk@cwlaw.com

Richard T Garren rgarren@riggsabney.com, dellis@riggsabney.com

Dorothy Sharon Gentry sgentry@riggsabney.com, jzielinski@riggsabney.com

Robert W George robert.george@kutakrock.com, sue.arens@kutakrock.com; amy.smith@kutakrock.com

James Martin Graves jgraves@bassettlawfirm.com

Tgrever@lathropgage.com

Jennifer Stockton Griffin jgriffin@lathropgage.com

John Trevor Hammons thammons@oag.state.ok.us, Trevor_Hammons@oag.state.ok.us; Jean! _Burnett@oag.state.ok.us

Lee M Heath ! lheath@motleyrice.com

Theresa Noble Hill thillcourts@rhodesokla.com, mnave@rhodesokla.com

Philip D Hixon phixon@mcdaniel-lawfirm.com

Mark D Hopson mhopson@sidley.com, joraker@sidley.com

Kelly S Hunter Burch fc.docket@oag.state.ok.us, kelly_burch@oag.state.ok.us; jean_burnett@oag.state.ok.us

Tina Lynn Izadi; tina_izadi@oag.state.ok.us

Stephen L Jantzen sjantzen@ryanwhaley.com, mantene@ryanwhaley.com; loelke@ryanwhaley.com

Bruce Jones bjones@faegre.com, dybarra@faegre.com; jintermill@faegre.com; cdolan@faegre.com

Jay Thomas Jorgensen jjorgensen@sidley.com

Raymond Thomas Lay rtl@kiralaw.com, dianna@kiralaw.com

Krisann C. Kleibacker Lee; kklee@faegre.com

Nicole Marie Longwell Nlongwell@@mcdaniel-lawfirm.com

Archer Scott McDaniel smcdaniel@mcdaniel-lawfirm.com

Thomas James McGeady tjmcgeady@loganlowry.com

James Randall Miller rmiller@mkblaw.net, smilata@mkblaw.net; clagrone@mkblaw.net

Charles Livingston Moulton Charles.Moulton@arkansasag.gov, Kendra.Jones@arkansasag.gov

Indrid Moll; imoll@motleyrice.com

Robert Allen Nance rnance@riggsabney.com, jzielinski@riggsabney.com

William H Narwold bnarwold@motleyrice.com

Jonathan Orent ; jorent@motleyrice.com

George W Owens gwo@owenslawfirmpc.com, ka@owenslawfirmpc.com

David Phillip Page dpage@edbelllaw.com, smilata@edbelllaw.com

Robert Paul Redemann rredemann@pmrlaw.net, scouch@pmrlaw.net

Melvin David Riggs driggs@riggsabney.com, pmurta@riggsabney.com

Randall Eugene Rose ! rer@owenslawfirmpc.com, ka@owenslawfirmpc.com

Michael Rousseau ; mrousseau@motleyrice.com

Robert E Sanders rsanders@youngwilliams.com,

David Charles Senger dsenger@pmrlaw.net, scouch@pmrlaw.net; ntorres@pmrlaw.net

Paul E Thompson , Jr pthompson@bassettlawfirm.com

Colin Hampton Tucker chtucker@rhodesokla.com, scottom@rhodesokla.com

John H Tucker jtuckercourts@rhodesokla.com, lwhite@rhodesokla.com

Elizabeth C Ward lward@motleyrice.com

Sharon K Weaver sweaver@riggsabney.com, lpearson@riggsabney.com

Timothy K Webster twebster@sidley.com, jwedeking@sidley.com

Gary V Weeks !

Terry Wayen West terry@thewestlawfirm.com,

Edwin Stephen Williams steve.williams@youngwilliams.com

Douglas Allen Wilson Doug_Wilson@riggsabney.com, pmurta@riggsabney.com

P Joshua Wisley ; jwisley@cwlaw.com, jknight@cwlaw.com

Elizabeth Claire Xidis cxidis@motleyrice.com

Lawrence W Zeringue lzeringue@pmrlaw.net, scouch@pmrlaw.net

Also on this 17th day of September, 2007 I mailed a copy of the above and foregoing pleading to:

David Gregory Brown
Lathrop & Gage, LC
314 E. High St.
Jefferson City, MO 65101

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

Cary Silverman
Victor E Schwartz
Shook Hardy & Bacon LLP (Washington DC)
600 14TH ST NW STE 800
WASHINGTON, DC 20005-2004

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

/s/ Louis W. Bullock
Louis W. Bullock